



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169564

PRELIMINARY RECITALS

Pursuant to a petition filed October 19, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephone hearing was held on November 10, 2015.

The issue for determination is whether the respondent correctly denied petitioner's prior authorization request for a cervical spine MRI.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], RN (written appearance)
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 4, 2015, the petitioner's medical provider requested PA approval for an MRI due to complaints of progressive weakening and neck and back pain with associated numbness.

3. On September 10, 2015, the respondent denied the petitioner's request for an MRI of the cervical spine.
4. The basis for the denial was that the PA request did not document that petitioner had completed a trial of at least six weeks of physician-directed care and clinical re-evaluation prior to the MRI prior authorization request, which is a criterion for approving such spinal imaging.

DISCUSSION

Physician-prescribed diagnostic services can be covered by MA, if they are consistent with good medical practice. Wis. Admin Code §§DHS 107.06(1) and 107.25. The respondent has made payment of CT, MRI, and PET scans subject to prior authorization, in an effort to determine if they are being ordered consistent with good medical practice. This prior authorization requirement was announced to providers in an *MA Update*, #2010-92, issued to all providers in October, 2010.

The instant PA request was denied because the DHCAA/OIG has determined that the PA request did not document that petitioner had completed a trial of at least six weeks of physician-directed clinical care and clinical re-evaluation prior to the MRI prior authorization request. The *MA Update* #2010-92 reminded providers that MedSolutions was the agent for administering PA's for such imaging services on behalf of the Department of Health Services and that MedSolutions would utilize national clinical guidelines in determining the medical necessity of the PA. The guidelines used, as provided with the agency's summary letter for the hearing, show that there is a requirement of showing that petitioner has had a trial of 6 weeks of physician monitored observation with clinical re-evaluation. See Exhibit 1. The petitioner testified that she has been seeing her medical provider for years, and therefore has obviously been involved in such a 6-week trial. Unfortunately, the PA documentation simply does not establish any basis for this contention. Based on the evidence before me, I must find that the petitioner's provider has not documented that the approval criterion were met, and that the agency has acted correctly in denying the PA.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Petitioner should be aware that nothing in this decision would prevent her medical provider from submitting a new Prior Authorization request that addresses the submission deficiencies noted by the respondent in Exhibit 3.

CONCLUSIONS OF LAW

The respondent correctly denied petitioner's PA request for an MRI of her cervical spine because the PA request did not document a trial of six weeks of physician-directed care with clinical re-evaluation prior to the PA request.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of January, 2016

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 22, 2016.

Division of Health Care Access and Accountability